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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 13-13098-reg

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In the Matter of:

SOUNDVIEW ELITE LTD., et al.

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

November 6, 2013

10:04 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

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Doc # 43 Motion of Debtors Pursuant to Section 365 of the
Bankruptcy Code, Bankruptcy Rule 6006 and Local Bankruptcy Rule
6006-1(a) for an Order Authorizing the Assumption of
Administration Agreements, as Modified, Between the Debtors and
Pinnacle Fund Administration LLC

Doc# 29 Authorizing the Retention and Employment of Porzio,
Bromberg & Newman, P.C. as Counsel to the Debtors Nunc Pro Tunc
to the Petition Date

Doc# 31 Motion Authorizing the Retention and Employment of
CohnReznick LLP as Financial Advisor to the Debtors Nunc Pro
Tunc to the Petition Date

Doc# 41 Motion Authorizing the Retention and Employment of
Patterson Belknap Webb & Tyler LLP as Special Counsel to the
Debtors, Nunc Pro Tunc to the Petition Date

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ALSO PRESENT TELEPHONICALLY:

Brian Smith, Pinnacle Fund Administration

1 P R O C E E D I N G S

2 THE COURT: Okay, Soundview. Folks want to come up on
3 that one, please? I know some of you, but I don't know
4 everybody. I want to get appearances, and then I have some
5 preliminary comments.

6 First, Mr. Martin, I know you, of course, and I
7 know --

8 MR. MARTIN: Thank you, Your Honor. I do have my
9 colleague, Rachel Segall; attorneys for the debtor, Porzio,
10 Bromberg & Newman. It's S-E-G-A-L-L; the reporter has --

11 MR. GLENN: Good morning, Your Honor. Andrew Glenn,
12 Kasowitz, Benson, Torres & Friedman, on behalf of Pasig Ltd.

13 THE COURT: Okay.

14 MR. ENGEL: Good morning, Your Honor. Larry Engel
15 from Morrison & Foerster for the Cayman joint liquidators.

16 THE COURT: Okay.

17 MR. HILDBOLD: Good morning, Your Honor. Billy
18 Hildbold on behalf of the joint official liquidators.

19 THE COURT: Okay.

20 MS. OSTAD: Good morning, Your Honor. Karen Ostad of
21 Ostad PLLC, on behalf of Optima as well as America Investment
22 and Richcourt Allweather Funds.

23 THE COURT: Okay. Mr. Zipes, are you appearing on
24 this one?

25 MR. ZIPES: Yes, Your Honor.

1 THE COURT: Okay. All right. Folks, I've got a
2 tentative, California style, after reading all the papers, many
3 of which rehash issues that are appropriate for December 17th
4 but aren't relevant, in my thinking, today. There is one
5 unanswered question which could affect my tentatives, but
6 somehow, with lawyers of this quality, I think that if it were
7 a factor, I would have seen it in the papers.

8 My tentative, folks, is to grant the Porzio
9 application, and to deny, without prejudice, or at the option
10 of the movant to continue the motions vis-a-vis CohnReznick and
11 Patterson Belknap, and to do likewise with respect to the
12 Pinnacle application.

13 On these, a matter that could inform the exercise of
14 my discretion, if it were true, would be if there is some
15 demonstrable urgency in deciding the matters that I think that
16 should be denied without prejudice. In particular, I would
17 need to know what is the need for any of the CohnReznick or
18 Patterson Belknap entities to be retained between now and
19 December 17th, especially if, as I understand, the interpleader
20 action is frozen for the time being. I have similar questions
21 with respect to Pinnacle. I understand that Pinnacle, at some
22 point, either would or might be providing useful services. But
23 I need to know whether, and to what extent, there is an urgency
24 in Pinnacle serving before December 17th or the decision that
25 would follow any proceedings that take place on the 17th.

1 It seemed to me that the assumption of that contract
2 has more than minimal economic consequences, but I can't tell
3 whether the Pinnacle services are worth the cost or not.
4 That's not to say, of course, that they're not, but I'm not
5 sure if there's an urgency.

6 Also, if Pinnacle is holding any information with
7 respect to the debtor, I saw no briefing or argument as to the
8 extent to which we could skin the cat by 542(e). And Pinnacle,
9 under such circumstances, might have whatever rights it has to
10 get paid its pre-petition debt, but they would be separate from
11 its duty to comply with any information that might hold with
12 respect to the debtor and that's necessary for the
13 administration of the estate.

14 Of course, if people want Pinnacle's services, going
15 forward, which is something I hardly rule out, nobody would
16 expect Pinnacle to do that for free. But it seems to me that
17 would be better clarified after we know what's going to happen
18 on the 17th.

19 So anybody want to be heard in opposition to my
20 tentatives? Mr. Martin?

21 Oh, let me say what I think is obvious, and I think I
22 said it at the last hearing. I'm expressing no views now, just
23 as I didn't then, vis-a-vis who should win on the 17th. But I
24 don't think it's appropriate to make the estate prosecute the
25 defense of the filing, or the matters related to it, without a

1 lawyer, or with one hand tied behind its back. And at least
2 until the 17th, implicit in my ruling is that Mr. Martin
3 continues -- Mr. Martin and his firm.

4 Go ahead, Mr. Martin.

5 MR. MARTIN: Thank you, Your Honor. Let me address
6 Pinnacle first, and then Patterson Belknap and CohnReznick.
7 Just as a housekeeping matter, Mr. Brian Smith of Pinnacle,
8 who's based in Raleigh, North Carolina, wanted to be here but
9 was not able to get here. And I understand they were trying to
10 make arrangements for him to dial in.

11 THE COURT: I have a dial-in log that shows you as
12 appearing by phone, which is obviously no longer the case.

13 MR. SMITH: Warren, this is Brian Smith. I actually
14 am on the line.

15 THE COURT: Oh, okay.

16 MR. MARTIN: Okay.

17 THE COURT: All right. Very well, Mr. Smith.

18 MR. MARTIN: Your Honor, with respect to Pinnacle --
19 and it's good that we're doing this one first so we can let Mr.
20 Smith go when we're done, because he's been very busy.

21 Let me say that 542(e) is -- or 542, rather, is not
22 required here. Pinnacle has been nothing but professional.
23 They -- after the petition, we began discussions with them, we
24 asked them for help, we filed the motion. Mr. Smith has shared
25 with us 5,500 pages of documents which represent the HSBC file,

1 who was the fund administrator before Mr. Smith.

2 With respect to the necessity and essential nature of
3 the application, I would say the following, Your Honor. I
4 don't think any of the other parties here would dispute, in the
5 hedge fund industry, the critical nature of a third party fund
6 administrator. It is, in effect, the back office for the
7 financial and accounting records of the fund. And because of
8 the Wilmington Trust interpleader, which Your Honor is well
9 aware of, the back office was frozen.

10 We have been in regular daily communications with Mr.
11 Morrissey, Ms. Riffkin. The CohnReznick firm -- and we'll get
12 to CohnReznick separately -- has been doing yeomen's work in
13 putting together schedules and statements. And a 341, although
14 I don't think I saw the notice, it was tentatively scheduled
15 for November 15th. We had committed to the U.S. Trustee to get
16 our schedules done by November 15th. They can't get done
17 without Pinnacle.

18 With respect to Mr. Smith's professionalism, I would
19 add the following. Mr. Smith cleared his calendar; he had some
20 forty or fifty items, cleared them for this case, and has been
21 working eight hour days, and he's on the line. But I know the
22 effort that he's been putting in.

23 So if you look at the objection, that was filed, to
24 assumption of this contract, and you think about the business
25 judgment test, the objection doesn't dispute pricing of

1 Pinnacle. It doesn't dispute that it's not in the debtors'
2 business judgment, other than the concept that the obligations
3 that this debtor has, as a debtor-in-possession, ought to be
4 put on hold until we decide who's captaining the ship.

5 But I sense, and Your Honor hinted to it a bit in your
6 opening comments, that a lot of what we're seeing here is
7 litigation, or litigation-driven. And I sense a concern, on
8 the part of my adversaries, that if they let this debtor do
9 what it's supposed to do, under the Bankruptcy Code, it'll be
10 used against them on December 17th.

11 We don't want credit. December 17th, we will make our
12 case or we won't, and Your Honor will rule on the appropriate
13 disposition of this case. We don't need credit for doing what
14 we're supposed to do, but to delay a project that anybody
15 needs -- and Mr. Smith can tell us, if necessary; I believe if
16 this case did go back to the Caymans, for example, Mr. Smith
17 would be retained on the same terms and out of the same funds,
18 and he would proceed forward. So why not do it now?

19 THE COURT: I take your points, Mr. Martin, but I have
20 residual questions. One is that -- perhaps I read the papers
21 too hastily; I did sense an uncertainty vis-a-vis the economic
22 terms. But more importantly, I was led to believe, either in
23 earlier proceedings in this case, or in the most recent round
24 of papers, that the debtor is not -- or actually debtors are
25 not actively running funds at this point. And therefore, it

1 was unclear to me as to the extent to which some of the
2 services that you articulated would be as necessary as if you
3 had an actively running fund. Can you help me on those things?

4 MR. MARTIN: My understanding, Your Honor, and
5 unfortunately I'm just an attorney, not a witness, but my
6 understanding is that in order -- to the extent your question
7 goes exclusively to timing --

8 THE COURT: Which it does, because I've got nothing
9 against Pinnacle, and so far as the record reflects, everything
10 you said about Mr. Smith and his diligence and his not holding
11 up anybody is entirely true.

12 MR. MARTIN: To the extent that your question goes to
13 timing, unfortunately, because of the situation in which these
14 debtors found themselves with the Wilmington situation, which
15 is now resolved, there was an extensive period of time where
16 what should have gotten done didn't get done. And now we're
17 debtors under the Bankruptcy Code, and I have requirements of
18 the U.S. Trustee's Office that I cannot complete without
19 Pinnacle. So I either need to get a pass on those, or we need
20 to bring Pinnacle in.

21 THE COURT: But I still have more authority than the
22 U.S. Trustee's Office, don't I?

23 MR. MARTIN: I'm sorry, Your Honor?

24 THE COURT: I still have more authority than the U.S.
25 Trustee's Office. I can give you a pass on schedules and

1 statements, if I think it's otherwise in the interest of the
2 estate. Not a pass, but a --

3 MR. MARTIN: Deferral?

4 THE COURT: -- deferral. I mean --

5 MR. MARTIN: It --

6 THE COURT: -- certainly I would hear from the U.S.
7 Trustee's --

8 MR. MARTIN: You know, you --

9 THE COURT: -- from Mr. Zipes or whomever --

10 MR. MARTIN: You --

11 THE COURT: -- as to whether there are immediate
12 needs. I would also want to hear from the parties as to
13 whether they think they need extra information. They sure have
14 been able to file a lot of paper without the benefit of what
15 would appear in the schedules and statements.

16 MR. MARTIN: Your Honor spoke about hamstringing in
17 terms of the selection of counsel. I would posit that not
18 giving us financial advisors -- not retaining financial
19 advisors at this time, not allowing assumption of the Pinnacle
20 contract, accomplishes that same hamstringing, because now you
21 have counsel without easy access to financial information. We
22 want to be transparent. I talked about that at the status
23 conference on October 16th.

24 We chose the U.S. of A. bankruptcy court for openness,
25 for avoidance actions, for transparency to tell our story, and

1 we will tell our story on December 17th. There are parts of
2 our story that will be difficult to tell, and will remain
3 untold, if we can't have access to Pinnacle, who again, I would
4 toss the question or ask Your Honor to toss the question to the
5 other parties: Do these funds not need a Pinnacle? Whether --
6 if we -- if the debtor was removed today from management, and
7 we put in Caymans liquidators, would the Caymans liquidators
8 not need Pinnacle, and would they find these terms
9 unreasonable? We want to mind the store, and if we lose on
10 December 17th, we want to present the best debtor and
11 transition the best debtor that we can on that day.

12 I don't think I have anything else to say on Pinnacle.
13 And with Your Honor's permission, then, I would turn to
14 Patterson Belknap.

15 THE COURT: Sure.

16 MR. MARTIN: Your Honor, there's two matters that
17 Patterson Belknap are handling besides the Wilmington Trust
18 matter. The Wilmington Trust matter, you're absolutely
19 correct, is concluded. And we attached two complaints as
20 exhibits to Mr. Harvey's certification. Mr. Harvey is present
21 in court.

22 One is the complaint against Gerti Muho, who is a
23 former director/officer of the debtor, who is alleged -- it's a
24 pretty strong allegation -- to have removed two million
25 dollars, unauthorized, from the debtors' bank account. Last

1 week, in that action, Mr. Harvey obtained a preliminary
2 injunction and froze over 400,000 dollars at Citibank for the
3 benefit of this estate. He is in the process of finding more
4 money, HSBC and elsewhere, and we hope and expect that he'll
5 find the entire two million dollars. To not give Mr. Harvey
6 the benefit of 372(e) retention, under these circumstances,
7 with him actively pursuing litigation for our behalf, I think
8 is not appropriate.

9 The other action is an action against Deborah Midanek,
10 also a former director of the debtors, for breach of a
11 confidentiality agreement and for damages. That action is
12 proceeding at pace, in the United States District Court for the
13 District of New Jersey. And the Muho action is Southern
14 District of New York.

15 And the prosecution of that action is related to all
16 the other -- without getting into them, it is related to the
17 matters Your Honor will be considering on December 17th. And I
18 will rely on Mr. Harvey's help and guidance in keeping me up to
19 speed and doing what he needs to do in that action. So again,
20 under those circumstances, with those two offensive litigation
21 actions that he's pursuing on behalf of these debtors, we would
22 ask that he have the comfort, at least, of knowing he can be
23 retained, recognizing that fees are for another day.

24 THE COURT: You understand why I'm not crazy about
25 having somebody working for the benefit of the estate and not

1 having some comfort that his firm would get paid for it.

2 MR. MARTIN: Yes, Your Honor, I appreciate that.

3 THE COURT: Let me confirm my understanding on what
4 you just said. From what I heard, on the first of the two
5 non-Wilmington Trust matters that you were talking about, your
6 opponents, the guys at the other table, would have a shared
7 interest in success in that litigation, if the guy did, as
8 alleged, rip off the estate for two million bucks.

9 MR. MARTIN: Absolutely.

10 THE COURT: But on the second one, it sounded to me
11 like you were trying to use Patterson Belknap to act contrary
12 to your opponents, and it would be less likely that they would
13 endorse that aspect. Of course I'm going to hear their
14 perspective, but I want to hear yours.

15 MR. MARTIN: I think that's accurate. The action,
16 just to put it in perspective, the first of those two actions
17 was filed post-petition. And as I mentioned, the injunction
18 against the Citibank funds was obtained by Mr. Harvey last
19 week. The second action we spoke about, which involves one of
20 the opponents, was filed by Mr. Harvey in either the spring or
21 summer. So it predated these petitions, and frankly, pre-dated
22 my knowledge of these debtors. So it hasn't been trumped up,
23 post-petition, to help in the litigation. It's a matter that
24 existed and was proceeding apace, and we would like to continue
25 Mr. Harvey's work on that matter. I believe there are motions

1 to dismiss, scheduled for November 18th, that Mr. Harvey has to
2 argue in Camden. And there's work to be done.

3 THE COURT: I understood from what you said, rightly
4 or wrongly, that he got a pre-judgment attachment. If you
5 know -- and I'll let you ask Mr. Harvey if you don't -- are
6 there other potential gains to the estate that might be
7 advanced if I were to allow him to continue to act before the
8 17th of December?

9 MR. MARTIN: Do you want to -- may Mr. Harvey address
10 the Court?

11 THE COURT: Yes, and he can do it directly.

12 Welcome, Mr. Harvey?

13 MR. HARVEY: Thank you, Judge. Thank you for your
14 time. The action against Muho actually arose from the
15 Wilmington Trust action. Mr. Muho went to Wilmington Trust
16 after he left the debtors, and he tried to withdraw -- transfer
17 five million dollars. He had created a new entity after he
18 left the debtors, called Leveraged Hawk, Inc. He went to
19 Wilmington Trust, and he tried to persuade them to transfer
20 five million dollars to Leveraged Hawk. The bank refused, and
21 brought an interpleader action, claiming that they were unclear
22 as to who had the rights to access the funds. We intervened
23 and showed the Court, we thought, that Mr. Muho --

24 THE COURT: The interpleader court?

25 MR. HARVEY: The interpleader court in Wilmington,

1 Delaware, Superior Court, that Mr. Muho had no such authority.
2 In fact, prior to the hearing, Mr. Muho participated in a
3 telephone conference with the judge, and when he was asked who
4 was representing the corporate entity, Leveraged Hawk, he said
5 I will. The judge said, well, you're not admitted --

6 THE COURT: Forgive me for interrupting you --

7 MR. HARVEY: Yes.

8 THE COURT: -- Mr. Harvey, I still have a very full
9 courtroom.

10 MR. HARVEY: Sure.

11 THE COURT: I'm not so concerned about the merits of
12 the underlying controversy with this guy, especially since he's
13 not here in the courtroom, as far as I know, and I may have to
14 adjudicate it, in the first instance, although I'm not sure if
15 I'd have Constitutional power to issue a final order if it
16 proceeded here.

17 But what I need to know is a narrow question, the same
18 one that I asked Mr. Martin. Is there stuff that you've got to
19 do immediately to protect the interests of the estate? Because
20 if you were successful in putting a freeze at Wilmington Trust,
21 then it doesn't -- it sounds like that fire's been put out. I
22 want to know if there are existing fires that need to be put
23 out, or things that you might do, between now and the 17th,
24 that would cause me to want you to continue --

25 MR. HARVEY: Yes.

1 THE COURT: -- to act between now and the 17th of
2 December.

3 MR. HARVEY: Let me focus my attention on that
4 question, Judge.

5 THE COURT: Please.

6 MR. HARVEY: The answer's yes. U.S. District Court
7 Judge Analisa Torres has entered, not only a TRO, but now a
8 preliminary injunction --

9 THE COURT: Analisa Torres is here in the Southern
10 District.

11 MR. HARVEY: That's correct. She has entered not only
12 a TRO but a preliminary injunction against Mr. Muho. We have
13 frozen his assets, in excess of 400,000 dollars at Citibank.
14 She has also granted us an order for expedited discovery. We
15 know that Mr. Muho has more money. We do not believe, in the
16 span of sixty days, he burned through over two million dollars.

17 We know some things. We know, for example, he went to
18 Atlantic City, and went to the Borgata casino and spent money
19 there. We know he also bought a luxury vehicle. But we also
20 believe that money has been transferred out of Citibank to
21 other accounts.

22 We have a process pending with Citibank to discover
23 what transfers were made out of his accounts to other accounts.
24 We also have served him with discovery, as authorized by Judge
25 Torres. And we intend to take his deposition later this month.

1 We believe that these discovery tools will help us identify
2 other funds that will come back to the debtor, at some point,
3 that Mr. Muho has taken from HSBC.

4 Essentially, when he failed to get money in
5 Wilmington, he went to HSBC in Monaco, and using what we
6 believe to be fraudulent documents, obtained the two million
7 dollars. And so we have frozen what we have found in Citibank,
8 because the money was routed through Citibank here in New York.
9 We've frozen what is left. We are trying to find the other
10 assets. And Judge Torres has given us expedited discovery to
11 find exactly that, where are the other assets, where are the
12 other monies.

13 And so the problem that we have is that unless we
14 press him, and unless we act expeditiously, he's going to burn
15 through the money. And the clock is essentially running on us.
16 And so that's why we're trying to act as quickly as we can.
17 We've been trying to serve him. He's been alluding service of
18 our deposition notice. And we're trying to get him in on a
19 deposition, and we are using process to obtain other
20 information.

21 THE COURT: If he's a party, why -- how can he evade
22 service?

23 MR. HARVEY: Well --

24 THE COURT: Once you get jurisdiction over a person at
25 the outset of the litigation, you don't need to keep serving

1 him with subpoenas.

2 MR. HARVEY: That's correct, but Judge Torres has
3 asked us to give him specific notice of the discovery tools and
4 specific notice of the deposition date. And in order to
5 schedule the deposition, we have to make sure he knows about
6 it, so we don't set up, prepare to take the deposition, he
7 doesn't show up and then claim to Judge Torres later he didn't
8 know about it.

9 So essentially, the clock is running. We are acting
10 as quickly as we can. And we are trying to find this money
11 before he continues to spend it. And we have a very limited
12 window, because he has shown a desire to spend as much of it as
13 he can, on himself, mostly, and perhaps to even start a new
14 business. And so for that reason we are seeking it.

15 And with respect to the New Jersey action involving
16 Ms. Midanek, she has a contract with the debtors that prohibits
17 her from engaging in conduct that's detrimental to the funds.
18 What we are trying to explore is what monies she took out of
19 the debtors, what payment she has made to herself, what payment
20 she has made to Solon Group.

21 There are cross motions pending. She has a motion to
22 dismiss. We have a motion for expedited discovery so that we
23 can get in and take her deposition and obtain documents from
24 her relating to the monies that she has taken out of the debtor
25 and has expended on other matters.

1 And so everything we're trying to do, Judge,
2 everything we're trying to do, is to bring money back into the
3 debtors, not for any other purpose. So our Muho action is to
4 find funds to bring them back, and our Midanek action is also
5 to find out from her how she spent the funds of the debtor, and
6 try to recover those funds by order of the Court. And we just
7 have a very limited window.

8 THE COURT: Okay, thank you.

9 MR. HARVEY: Thank you.

10 THE COURT: Mr. Martin, anything further before I give
11 your opponents a chance to be heard?

12 MR. MARTIN: Yes, Your Honor, just -- I don't want my
13 lack of speaking on it to be deemed acquiescence. The third
14 item I wanted to speak on was CohnReznick. And frankly, for
15 all the reasons that I expressed with respect to Pinnacle, it's
16 critical that we have financial advisors who are assured,
17 again, subject to the fee application process -- are assured
18 that, should they do their job and do it well, and Your Honor
19 ultimately finds that it was appropriate, the steps that have
20 been taken, that they have some assurance that they will be
21 paid at that time. And Mr. Bernie Katz of CohnReznick is in
22 court, if the Court has any questions.

23 THE COURT: Okay. Mr. Glenn, do you want to be heard
24 first?

25 MR. GLENN: Thank you, Your Honor. I'm not going to

1 address the issues of the Porzio retention. We're going to
2 rest on our papers. I think the liquidators have some items to
3 add with respect to that.

4 Concerning Pinnacle, we were able to speak with Mr.
5 Smith, and I would indicate that he was helpful; he was
6 cooperative with us. And our first inclination, when we heard
7 about the Pinnacle retention, was, you know, can't we use 542;
8 why is this necessary? And what we learned was that it's
9 probably unhelpful, if not useless, to us, because the problem
10 with this debtor is that it essentially does not have many, if
11 not all, of the accounting records that a fund would typically
12 have, since around the 2009 or 2010 time frame. So what
13 Pinnacle proposes to do, as we understand it, is to roll the
14 company forward, from 2009 to 2013, as if this bankruptcy had
15 never occurred.

16 Now, the problem with that is that it's obviously
17 expensive, it's not going to happen between now and the
18 hearing, and in our view, it sort of begs the question about
19 the fundamental leadership and direction of this company. Yes,
20 some accounting work will need to be done, at some point in
21 time. But someone's going to --

22 THE COURT: Pause, please, Mr. Glenn.

23 MR. GLENN: Yes.

24 THE COURT: By whom?

25 MR. GLENN: Well, that's the question. That's the

1 question; under whose direction? To cite one example --

2 THE COURT: Well, under whose direction is not the
3 same question as by whom. On one side, you have the guy or
4 woman who's giving the orders, and on the other hand, you have
5 the company that's taking the orders.

6 MR. GLENN: Correct. Correct.

7 THE COURT: And I well understand your problems and
8 the JOLs problems with who's giving the orders, but I'm trying
9 to get my arms on who's going to take the orders, and whether
10 orders should be taken between now and the 17th.

11 MR. GLENN: Well, two responses to that, Your Honor.
12 Most, or a significant portion, of the accounting that needs to
13 be done is questions regarding inter-fund and intra-fund
14 transfers within the Fletcher family of funds, both that are
15 debtors before Your Honor in this case, the cases under Mr.
16 Davis' auspices, the BVI companies that Ms. Midanek is running.
17 And it could very well be the case that the cost of doing this
18 process outweighs the benefit of it. We could explore subcon
19 (ph.). We could disregard all these intercompany claims. The
20 creditors and redeeming investors, such as my client, could get
21 together and come up with a global resolution in this case
22 without undertaking that process.

23 And it's important to understand that the amount that
24 they want to charge for this is based on a variety of
25 assumptions that very well may not prove to be true, that there

1 are accounting records that would allow them to reconstruct and
2 roll forward the company's books and records, calculating the
3 net asset value of each fund, on a quarterly basis, from the
4 time Pinnacle was supposed to start working until today. So
5 there's no guarantee that 240,000 dollars is going to be the
6 extent of the work that needs to occur.

7 I don't want to prejudice their litigation position by
8 my objection to this, and their position with the U.S. Trustee,
9 so consistent with Your Honor's indication, we would support an
10 extension to file schedules, and we would not use the fact that
11 they didn't file their schedules, within a certain amount of
12 time, against them on the 17th.

13 But what I think the critical issue here is, Your
14 Honor, the fact that the company doesn't have these books and
15 records since 2009 and 2010, is what it is. That was the case
16 as of the petition date. And whether they could rectify that
17 between now and December 17th, begs the question of why these
18 books and records didn't exist for years before these debtors
19 filed Chapter 11 petitions. So --

20 THE COURT: Pause, please, Mr. Glenn. You talked
21 about issues vis-a-vis intercompany obligations and
22 intercompany transfers, or potential intercompany transfers. I
23 had another case on my watch for a couple of years, Adelphia.
24 Your firm was actively involved; I'm not sure if you personally
25 were --

1 MR. GLENN: I was.

2 THE COURT: -- as involved as some of the others. One
3 thing we learned in Adelphia was that doing the schedules and
4 statements required not just getting one's arms around the
5 obligations to the outside world, but getting one's arms on the
6 intercompany obligations. Do you have a view, one way or the
7 other, as to whether any accurate schedules and statements
8 could be done, until there was more either forensic analysis,
9 or otherwise, vis-a-vis the intercompany obligations?

10 MR. GLENN: Do I have a view as to whether an --

11 THE COURT: Or am I going to have a situation, as I
12 did in Adelphia, where it was almost two years before schedules
13 and statements filed because of the inability to get
14 intercompany obligations fixed with satisfactory certainty.

15 MR. GLENN: I don't think this debtor is anywhere near
16 as complicated as Adelphia, based on very preliminary
17 indications and my informal conversation with Mr. Smith, who
18 was helpful about this. But there's no definitive end in sight
19 for this process, and I don't have any confidence that it can
20 be done before December 17th. To my mind, this company is
21 divided into buckets. It's a fund-to-funds investment vehicle.
22 So the third-party investments, if they exist, as has been
23 described to us, are in reputable, major, international hedge
24 funds. We certainly can get accounting statements from those
25 funds, because they're provided to all their investors,

1 including the debtors and other people. The cash is sitting in
2 Wilmington Trust; we hope it stays in Wilmington Trust, despite
3 some of the issues that have been described to us. So the only
4 real issue here is what do we do with these inter-fund claims.
5 And I think that, as a matter of confidence in the process and
6 in the integrity of the process, that can't be done without
7 second guessing, without the possibility of significant regret
8 about the cost and the direction, in our view, without a true
9 independent fiduciary to run it. Otherwise, if an independent
10 fiduciary is appointed by this Court, if the case moves to the
11 Cayman Islands, under the auspices of the liquidators, they're
12 going to have to revisit what has been done.

13 So in my estimation, if they're doing this for us, so
14 that we can get a snapshot of what this company is about, in
15 the next quarter or so, we don't want the money spent. Okay.
16 We're going to freeze the record, as of the petition date.
17 We're not going to use the fact that they didn't do this post-
18 petition as some nefarious issue that independently warrants a
19 trustee or dismissal of the case in favor of the Caymans.

20 But given the cloud over these cases, and in my view,
21 the almost certainty, if the Court does appoint a third party
22 or the JOLs are running this case, that it's going to be second
23 guessed, there's going to be a do-over, why waste that money?
24 Let's do this right.

25 The Court scheduled this hearing for December 17th,

1 based on a variety of issues: the government shutdown, as I
2 understand it. And the case is being drawn out. We shouldn't
3 use this stub period to sort of fill in that space, like gas
4 occupying a room, just because we have it. Let's sort out
5 who's going to run this case and agree with that person, be it
6 Mr. Fletcher, be it a trustee, be it the JOLs, about the right
7 way to do this once and to do it once correctly.

8 With respect to Patterson Belknap, I'm going to divide
9 this into two pieces. One is the Wilmington Trust and Midanek
10 actions, and the other is the Muho actions.

11 With respect to Midanek and Wilmington Trust,
12 Wilmington Trust, those funds are now frozen. That case, as we
13 understand it, is on a suspense calendar. Nothing is going to
14 happen in that case for the foreseeable future. Whether Ms.
15 Midanek should remain in place begs the question, almost, about
16 the outcome of the trustee motion. That case, as we understand
17 it, in New Jersey, is yet another struggle about who's supposed
18 to be running the funds, what authority Ms. Midanek had versus
19 Mr. Fletcher. That's going to be sorted out between now and
20 we're on December 17th. Again, if an independent fiduciary is
21 running this debtor, that person should have the right to
22 review the Midanek action and decide whether to move forward.
23 But it seems to us that it begs the question of who's going to
24 be running this fund and whether there really is a true dispute
25 over Ms. Midanek's stewardship of the funds she's running and

1 the Soundview funds before the Court.

2 THE COURT: I'm confused then, Mr. Glenn; I'm not sure
3 which way that cuts. I thought there were allegations that Ms.
4 Midanek was ripping off the estate, just like Muho was. If I
5 misunderstood that, you or the others can help me. But if it
6 is a matter of stuff that you or your allies might have the
7 same gripes against her that the existing management has, that
8 Mr. Harvey's quarterbacking, I'm not sure whether I should fire
9 Mr. -- not fire -- Mr. Harvey, I mean no disrespect. I wonder
10 if I should put Mr. Harvey's Patterson Belknap firm on hold
11 while things clarify, or whether it advances the joint interest
12 to allow him to continue between now and the 17th.

13 MR. GLENN: I fundamentally disagree with the
14 assertion that Ms. Midanek has ripped off these debtors. If
15 that were the case, we'd see a motion for an order of
16 attachment like we saw in the Muho action, and I'll get to that
17 in a moment because I have very different concerns about that,
18 and based on what I've heard, I'm ready to revisit our position
19 with respect to that. But there's no proof that we've seen
20 that Ms. Midanek took any money out of this company that she
21 wasn't entitled to.

22 The allegations that I've seen or that she might have
23 overcharged fees or that people disagreed with business
24 decisions she made but she's from a reputable firm in the
25 United States, she worked on many, many Chapter 11 cases, she's

1 a member of our community and I haven't seen proof of anything
2 either way but I'm very skeptical that Ms. Midanek should be
3 classified anywhere near where we see Mr. Muho and what he's
4 done.

5 Ms. Midanek was appointed by Mr. Fletcher as was Mr.
6 Muho as we understand it but the court in the British Virgin
7 Islands has reaffirmed her right to run the British Virgin
8 Island funds, not before Your Honor. She filed a liquidation
9 petition in the Cayman Islands, which, as we understand it,
10 divested her of authority -- any authority with respect to the
11 debtors before Your Honor. So if she were engaging in any
12 nefarious conduct, the last place she'd run is to a court that
13 would supplant her authority and investigate her.

14 So there are no guarantees of anything in life but we
15 are very, very cynical of an allegation that she's stolen or
16 siphoned away any money from the estate and there are none that
17 have risen to the level that Mr. Muho has engaged in.

18 THE COURT: Is a corollary of what you just said that
19 you see no urgency in proceeding against Ms. Midanek?

20 MR. GLENN: That's correct. And she's party to the
21 proceedings before Your Honor. So Your Honor can -- and she's
22 being deposed, I believe, after court today. So if anyone
23 comes to us and identifies any improper transfer, we'll be
24 right back here before Your Honor to support that petition
25 because we're not going to bite our nose to spite our face and

1 that's a good segue into Mr. Muho.

2 As we understood it, when the Patterson Belknap
3 application had been filed, before that time, we understood
4 that there was litigation between Fletcher and Muho. That was
5 out in the open in Delaware. We were not aware of this two
6 million dollar transfer from Monaco to Mr. Muho until the
7 Patterson Belknap application was filed. We saw that there was
8 an order of attachment and we saw that there were funds
9 attached and we understood that the work was essentially done
10 and that that would be frozen and we could wait until December
11 17th.

12 If there's a deposition to be done between now and
13 December 17th, if their serviced to be issued to Mr. Muho, if
14 there's other activities that need to be done to freeze those
15 assets, we would withdraw our objection to allow those things
16 to happen between now and December 17th.

17 If they can identify more assets, great. It should be
18 on an agreed upon basis so that we keep the ship righted. And,
19 again, we're not going to stop them from doing that and we
20 would withdraw our objection to allow whatever minimum amount
21 of work needs to be done between now and the 17th so that the
22 estate's rights are not prejudiced in that interim period.

23 Concluding with the CohnReznick firm, there's
24 absolutely nothing in that application and there's nothing in
25 the reply to our objection indicating any urgency in moving

1 forward with that firm between now and December 17th and
2 there's nothing that counsel has articulated today. If there
3 is anything, we'd like an opportunity to be heard with respect
4 to that but we think that that firm's retention can wait
5 without prejudice to anyone between now and December 17th. And
6 I'm sure if we make a contrary point on December 17th, Your
7 Honor will remind us of the position we took today. We're not
8 going to do that.

9 THE COURT: Okay.

10 MR. GLENN: Thank you.

11 THE COURT: Now, let me hear from JOLs. Mr. Engel?

12 MR. ENGEL: Yes, Your Honor.

13 I generally agree with Mr. Glenn and as to the Muho
14 situation, I agree as well that can go forward.

15 Speaking to the Midanek situation, if you look at that
16 closely as we do, you will see that this is another Mr.
17 Fletcher controlled governance fight. This time it involves
18 BVI and indirectly the Caymans as well. There's absolutely no
19 reason for this Court to allow the debtors to start another
20 governance by -- it is totally counterproductive and ill-
21 advised for lots of reasons and certainly doesn't need to
22 happen between now and December 17th. There's no reason for
23 that at all.

24 The JOLs have their own investigations. We look at a
25 variety of things and we think that the Deborah Midanek

1 situation is the lowest point of investigation of our concerns.
2 And, basically, she's a whistleblower and this is a retribution
3 is the way it appears to us.

4 As to the CohnReznick situation, I totally agree with
5 Mr. Glenn. There is no basis for that and whatever work they
6 did would have to be redone. After the 17th, it would be not a
7 productive expenditure. Having been through depositions in the
8 last week with three of the directors, I see no basis for
9 CohnReznick to be needed for the 17th at all. I'm sure they
10 have some ideas but they're not apparent to me and I was
11 looking for them as we went through that discovery process.

12 So we strongly oppose the Belknap Midanek situation,
13 we oppose CohnReznick. And as to Porzio, let me clarify our
14 objection.

15 It was not to keep them from their work on the 17th.
16 We heard Your Honor. We understand the debtors' rebel
17 government in exile needs to be represented by counsel. Fine.
18 They can do that on the 17th. But what's happening, in fact,
19 is far beyond that and it -- it is objectionable beyond that.

20 And so, for example, I'd invited Warren to update his
21 conflict disclosures because there's new information that the
22 Court should have that we think bears on all this which is the
23 fact that Porzio is representing at least two of the three
24 directors, officers, managers, the Fletcher team, personally.
25 And the third one is a money situation -- I can explain to you,

1 if you wish. They may or may not be representing Mr. Saunders
2 but they are representing Mr. Ladner and they are representing
3 Mr. Fletcher individually and we think that that's
4 objectionable and creates all sorts of conflicts.

5 From our perspective, we're investigating Mr.
6 Fletcher, we're investigating Mr. Ladner and they're not just
7 potential defendants, they're also claiming to be creditors,
8 they're seeking indemnification, they're defense is to
9 indemnification. How can debtors' counsel represent
10 individually those insiders under these circumstances? I've
11 never seen that allowed as a matter of disinterestedness. So
12 we have that concern with respect to Porzio. So it's really
13 the scope of what it is that Porzio is doing that is the issue
14 here today not their defense on the 17th.

15 We're not trying to resist what Your Honor told us you
16 wanted to have happen. We're accommodating that perspective;
17 we just don't want to get it out of control. And what's really
18 blown this whole thing up, frankly, is the fact that they are
19 intermeddling in the -- someone for the debtor and in due
20 course we'll find out who, is intermingling and meddling in the
21 Cayman Islands in a very serious way.

22 The thing that distinguishes this case from all the
23 other cases that you're talking about is that we're here in
24 part because CIMA wants us here; the Cayman Islands Monetary
25 Authority. The sovereign regulator of these Cayman companies

1 wanted the JOLs to be appointed. They missed that whole point
2 in their opening affidavits the first day -- you still don't
3 understand from them in their papers why their role is seen as
4 so critical here but we have sovereign issues here with a
5 regulator who's never been stayed because of 362(b)(4) and
6 other reasons and yet they're telling -- they're instructing
7 people in Cayman not to answer our questions, not to cooperate
8 with involun --

9 THE COURT: They, to whom you made reference, leads
10 that program?

11 MR. ENGEL: The debtors, and they include the Porzio
12 firm, I believe, have told Stuarts, for example, not --

13 THE COURT: Who is Stuarts?

14 MR. ENGEL: That's a law firm in the Cayman Islands,
15 Your Honor.

16 THE COURT: Acting for whom?

17 MR. ENGEL: Acting for the debtor; Soundview in the
18 Caymans. They were party to the action in the Caymans. And
19 under Cayman law, they're accountable to the JOLs. They're
20 supposed to cooperate with the JOLs, they're supposed to turn
21 over records. And what's going to happen, I suppose, is that
22 CIMA is going to have to -- to go to their Cayman people. If
23 we're not -- if we're supposedly stayed for asking for
24 information, which is what we're doing, and trying to do it
25 informally rather than trying to use discovery, we'll, I guess,

1 have to have CIMA do it. I mean they're certainly not stayed.

2 From the Cayman perspective, this meddling in the
3 Caymans is a serious, serious sovereign issue. And the worst
4 part of it, economically, and I'm sure this alarms the real
5 parties-in-interest here, the major investors, is HSBC came and
6 told CIMA that someone, a "a director" was trying to move
7 assets out of the Cayman Islands. Now, they deny there even
8 are assets in the Cayman Islands but we believe there are, we
9 believe that's the registered place where HSBC came into hold
10 the securities. We can't have people moving assets out of the
11 Cayman Islands between now and the 17th. This was supposed to
12 be a status quo maintenance situation. And we can't get HSBC
13 to talk to us because they're told by Porzio they're violating
14 the stay. Everybody's afraid of the stay. But it doesn't
15 apply to CIMA and it doesn't apply to CIMA's agents and we
16 don't think it should apply to the JOLs either.

17 So what I'm suggesting to Your Honor, is not that
18 Porzio doesn't represent them on the 17th, I'm not trying to
19 change history and I'm not trying to move back -- the last
20 thing I want to do is move back the date, what I am suggesting
21 is that the legitimate scope of what they're doing should be
22 narrowed to what they're supposed to be doing in the interim
23 period which is getting ready for the 17th.

24 We have never tried to restrict them for what they
25 tried to do on the 17th here. We're just trying to keep the

1 scope of it to that. And Mr. Martin is correct, maybe I should
2 have filed a request for a protective order and that seems a
3 lot of cumbersome more expensive, et cetera, than just trying
4 to address this question directly to Your Honor but
5 fundamentally, there's going to be unnecessary conflict if the
6 scope of that representation continues to expand into the
7 Caymans.

8 And what triggered all this is that there's an
9 upcoming motion to hire Stuarts. Well, as soon as that happens
10 over objections, I expect, we then get into some really
11 interesting questions because, for instance, if they try and
12 use Stuarts as an expert up here, then the question becomes
13 experts don't have privileges anymore, now, we're cross-
14 examining our own debtor on our own privilege to waive the
15 privilege. I mean it's counterproductive, right? I mean,
16 the -- things are getting out of control. Your Honor should
17 understand that. The scope of what Porzio was doing should be
18 limited in a reasonable way and that's my major concern for
19 Your Honor today. Do you have any questions?

20 THE COURT: Not that I didn't already ask you.

21 MR. ENGEL: I'm sorry.

22 THE COURT: Not that I did not already ask you.

23 MR. ENGEL: Thank you.

24 My colleague has a brief comment on Pinnacle and then
25 we're --

1 THE COURT: Mr. Hildbold?

2 MR. HILDBOLD: Good morning, Your Honor. Billy
3 Hildbold on behalf on the JOLs.

4 We also had a productive conversation with Mr. Smith
5 and we did not file an objection because it was our
6 understanding that the books are in such disarray that they
7 needed someone to be working on them and it was our
8 understanding that it was going to take a while to get this
9 done. We were not led to believe that this would be done by
10 the 15th but that this was an ongoing project.

11 We do have concerns, the same concerns that Pasig
12 raised about revisiting the costs and understanding that at the
13 end of the day it's largely Pasig's dime so we are concerned
14 about this and --

15 THE COURT: I'm losing you in pronouns. You're
16 concerned about what? I thought you said half-a-second ago
17 that you weren't objecting to the Pinnacle retention.

18 MR. HILDBOLD: Right. We did not object because --
19 because of the disarray of the books but we do have concerns
20 about the cost.

21 THE COURT: So your problem is not that Pinnacle
22 serves, it's the price at which Pinnacle would serve.

23 MR. HILDBOLD: Right. Mostly because we weren't made
24 aware of the negotiations that took place, how this price was
25 arrived at. As Mr. Glenn said, from what we understand, it was

1 largely based on assumptions to get this work completed by the
2 15th.

3 THE COURT: The 15th of what? I lost you.

4 MR. HILDBOLD: I believe November 15th to the
5 schedule. Correct?

6 THE COURT: Oh, the debtors' existing deadline for
7 filing schedules. Is that right?

8 MR. HILDBOLD: Right.

9 THE COURT: Well, what about the point that I asked
10 Mr. Glenn? If you have intercompany obligations, do you think
11 the best accounting firm in the world could do schedules and
12 statements before the 15th or any date before the 17th or any
13 date before the summer of 2014?

14 MR. HILDBOLD: We don't know that it's that
15 complicated, as you described earlier in Adelphia, but we do
16 have concerns that this could not be completed by the 15th.

17 THE COURT: All right. I'm losing my bearings in this
18 to a certain extent. I'm trying to get my arms around the
19 extent, if any, to which I still have objections to the
20 retention of Pinnacle as a conceptual matter and apart from
21 that, as a level two issue, whether there is agreement that
22 Pinnacle's fine, nobody's said anything bad about Pinnacle
23 itself, whether people simply want to have the opportunity to
24 have input as to its cost.

25 MR. HILDBOLD: Let me make sure I under --

1 THE COURT: And I want just not -- I want not just
2 your position but your understanding of the other guy's
3 position.

4 MR. HILDBOLD: I think my understanding from Mr. Glenn
5 is that this is not -- they're not capable of completing this
6 before --

7 THE COURT: "They" being Pinnacle?

8 MR. HILDBOLD: Yes, sir. That they are not capable of
9 completing this before the 17th and, therefore, their retention
10 should not go forward before then because it's not required.

11 THE COURT: Um-hum. And your view is to what extent
12 similar and to what extent different?

13 MR. HILDBOLD: I believe that our position is similar,
14 although as the JOLs, we recognize that at some point this work
15 will likely need to be done.

16 THE COURT: And that Pinnacle would be good as any an
17 entity to do it?

18 MR. HILDBOLD: As far as we know at this time.

19 THE COURT: Um-hum. All right. Anything else?

20 MR. HILDBOLD: No, sir.

21 THE COURT: All right. Ms. Ostad and then I want to
22 hear from Mr. Zipes.

23 MS. OSTAD: Good morning, Your Honor.

24 I omitted to mention when I introduced myself this
25 morning that I also represent the Solon Group, Inc. and Deborah

1 Midanek, its principal.

2 And to correct something that Mr. Martin said earlier,
3 it is actually the Solon Group and not Ms. Midanek in her
4 personal capacity that was appointed at the request of Mr.
5 Fletcher to be a director of a number of the Richcourt funds
6 including these debtors and who essentially resigned from these
7 debtors' boards in order to bring creditor petition on behalf
8 of the BVI entities that Solon is the director of in the Cayman
9 Islands. And unfortunately, it was because Ms. Midanek had the
10 audacity to see that she had fiduciary duties to investors and
11 brought those petitions that she was sued in her individual and
12 personal capacity in late July in the District of New Jersey on
13 allegations of --

14 THE COURT: Which vicinage? Down in Camden did I hear
15 somebody say?

16 MS. OSTAD: I believe so, Your Honor. I'm not counsel
17 in that case. It is pending in federal court in the District
18 of New Jersey --

19 THE COURT: Um-hum.

20 MS. OSTAD: -- on claims of disparagement, breach of a
21 confidentiality provision of her contract as a director and for
22 damages relating to those.

23 Your Honor may have noticed that I involuntarily
24 jumped out of my chair earlier and that is because it is for
25 the very first time during Mr. Harvey's addressing the Court

1 that I've heard that there's even a mention or a question of
2 Ms. Midanek taking monies from these debtors in an unauthorized
3 manner.

4 I should note to the Court that there are nine
5 accounts aside from the six accounts that are frozen to these
6 debtors at Wilmington Trust, there are nine other accounts
7 which include the accounts that my client is -- well, BVI
8 entities that are my clients and Solon is a director of that
9 are also frozen at Wilmington Trust that are not the subject of
10 these proceedings.

11 It is because of those frozen accounts that we've been
12 very, very judicious in my involvement in these cases, my
13 filing of pleadings in these cases and so forth because we're
14 dealing with funds that also Solon is the director of that are
15 themselves in need of an orderly wind down.

16 So it's my belief, Your Honor, and I've asked the
17 debtors' counsel on several occasions in the past few weeks
18 that we agreed to stay those New Jersey proceedings because
19 there's no prejudice in waiting until after the December 17th
20 hearing because I believe that another fiduciary, if there is
21 one appointed, will make different decisions about whether
22 those suits should -- that suit should proceed.

23 Ms. Midanek's separate counsel has moved to dismiss
24 that proceeding or in the alternative to stay it or have the
25 Court abstain pending the outcome of these proceedings.

1 After those --

2 THE COURT: But those -- normally when I'm staying
3 another court, I do it in more gentlemanly way. I pick up the
4 phone to the district judge or whoever it is and say, hey,
5 listen, I don't like to stay you but I would appreciate it if
6 you would put things on hold for a while and I assume that from
7 your perspective that would skin the cat.

8 MS. OSTAD: I believe it would, Your Honor, but it's
9 only be after we've had, through other counsel, to brief
10 matters before that court now and the debtors have also made
11 emergency requests for expedited discovery there, none of
12 which, I was told, seek to have discovery about monies being
13 taken but simply to explore jurisdictional and related issues.
14 And again, in the interest of economy of these debtors' assets
15 and others, we'd ask for those matters to be stayed. And it
16 really -- the denial of that request has fueled our concerns
17 that this is a personal vendetta to make matters as expensive
18 as possible for Ms. Midanek. Unfortunately, these are
19 indemnifiable actions but --

20 THE COURT: Indemnifiable actions are, nevertheless,
21 pre-petition debts and there is not easy way to make any
22 payment on indemnifiable obligations.

23 MS. OSTAD: Yes, Your Honor. It would be acceptable
24 to us to freeze those proceedings or stay them pending the
25 outcome of the December 17th hearings, Your Honor.

1 THE COURT: Let me rephrase the question, Ms. Ostad.

2 Can I, in fairness to both sides, if I tell Mr. Harvey
3 that he's got -- he doesn't yet have authority to act in the
4 Midanek action, can I do that in a way that doesn't prejudice
5 the company in the event that you're view of the world isn't
6 the only view of the world?

7 MS. OSTAD: I believe that, perhaps, we can agree that
8 the matters that are before the New Jersey court in connection
9 with Ms. Midanek's motion to dismiss or stay has been fully
10 briefed by both sides. That's my belief and that the matter is
11 subjudice without further oral argument unless it's requested
12 by the district court --

13 THE COURT: To what extent have issues already been
14 fully briefed in that action?

15 MS. OSTAD: With respect to the motion to dismiss,
16 they have been fully briefed.

17 THE COURT: And that's a motion that you filed or your
18 co-counsel filed?

19 MS. OSTAD: My co-counsel filed, yes. And there is a
20 separate motion for expedited discovery that I believe is
21 returnable on the 18th of November there that has, I believe,
22 been opposed by my co-counsel and we has just informally
23 requested --

24 THE COURT: Opposed?

25 MS. OSTAD: Opposed. And we have been formally

1 requested that parties agree to simply hold that discovery in
2 abeyance pending the outcome of the December 17th hearing.

3 I believe we can agree that if it is held in abeyance,
4 that there is no prejudice to either side in seeking it again.

5 THE COURT: Who is the named plaintiff in the Midanek
6 action?

7 MS. OSTAD: Deborah Midanek.

8 THE COURT: She's plaintiff?

9 MS. OSTAD: I believe it's Deborah Hicks Midanek that
10 is the named plaintiff.

11 THE COURT: Oh, I thought she was the defendant.

12 MS. OSTAD: Oh, I'm sorry; Your Honor, I misspoke.

13 The named plaintiffs are fifteen funds which -- six of
14 which are the debtors and nine of which are other Richcourt
15 funds, all of whom have Fletcher Asset Management or related
16 management companies as their managers and all of whom have Mr.
17 Fletcher as a director.

18 THE COURT: What name for that lawsuit would be
19 meaningful to the New Jersey District Judge?

20 UNIDENTIFIED SPEAKER: The plaintiff is attached to
21 Mr. Harvey.

22 MS. OSTAD: I believe it's In re Richmond -- Richcourt
23 Funds, Limited, et al., but I'm not positive.

24 THE COURT: Richcourt -- all right. It's in the
25 Harvey affidavit?

1 UNIDENTIFIED SPEAKER: Yes. Attached to the Harvey
2 affidavit and --

3 THE COURT: All right. That's good enough. If I
4 decide to go that route, I got what I need. All right.

5 Anything else, Ms. Ostad?

6 MS. OSTAD: I would be happy, Your Honor, to provide
7 the court clerk with the case number as well.

8 THE COURT: Um-hum. Anything else?

9 MS. OSTAD: Other than that, Your Honor, we support,
10 and have not filed separate papers, but support the objections
11 that have been filed to the various retention applications.

12 THE COURT: All right.

13 MS. OSTAD: Thank you.

14 THE COURT: Mr. Zipes?

15 MR. ZIPES: Greg Zipes with the U.S. Trustee's Office
16 on what is sort of a side issue in connection with all this
17 litigation.

18 My office did agree to a deadline. It's part of a
19 back-and-forth that typically takes place with debtors and
20 until the debtors are displaced in some fashion we deal with
21 the hand we're dealt. Obviously, it's not a court order it's
22 just a promise that we won't do something before that date
23 based on a failure by the debtor.

24 If the debtor is having specific issues with filing
25 schedules -- and we always work to get those filed as quickly

1 as possible and everybody is usually on board with that, more
2 transparency is better than less transparency. But if there is
3 some issue or if there's a money issue or something like that,
4 we'll typically approach the debtor and ask, is there some
5 portion of the schedules that can be filed, or is there
6 something that can be filed to at least give some disclosure in
7 the meantime.

8 And we did -- if we knew that this was a specific
9 issue in this case, we might have recommended, and we do
10 recommend that perhaps some middle ground could be met with the
11 schedules so that something's on file if the work has been
12 done, subject to review and subject to revisiting if there's a
13 change in control of this debtor at some point in the near
14 future. And obviously, having that information out in some
15 form may be helpful at the next hearing.

16 And I've heard the parties, that they're not going to
17 use this filing of schedules as evidence or lack of evidence of
18 bad faith, and so it would just be another piece that this
19 Court can use in deciding whether -- what to do when the
20 hearing occurs on the 17th.

21 THE COURT: Um-hum.

22 MR. ZIPES: So we would obviously defer to the Court
23 if the Court wants to extend times for the schedules. And we
24 wouldn't require a separate application in that regard.

25 THE COURT: Um-hum. Do you have a position vis-a-vis

1 what Mr. Engel said about Porzio not being disinterested?

2 MR. ZIPES: Your Honor, I didn't review that retention
3 application. All I can say is that if there was some lack of
4 disclosure, my office would be very concerned about that. And
5 I --

6 THE COURT: I think the problem is exactly the
7 opposite of lack of disclosure. His contention is that what
8 was duly disclosed is a disabling cup.

9 MR. ZIPES: And, Your Honor, we are faced with that as
10 well. And oftentimes we'll ask for disclosure without fully
11 understanding that we don't have the background of the
12 creditors. If it turns out that there was a disabling -- this
13 is a disabling conflict, then obviously we'll review the
14 situation and bring it to the Court's attention, if other
15 parties don't do so in the meantime.

16 But for example, if funds come from a third party to
17 fund the debtor, we'll ask for a disclosure of that fact and
18 then someone might subsequently come forward and say, well,
19 that -- that actually is creating a conflict in the case, we
20 didn't necessarily recognize it as such when the disclosure was
21 made. So --

22 THE COURT: All right. Folks, I've heard plenty.

23 But I want to hear, Mr. Martin, your views and your
24 position on the allegation of disinterestedness deficiencies.

25 MR. MARTIN: Thank you, Your Honor. And with all due

1 respect, I think Your Honor -- and I'll repeat it. Mr. Engel
2 can correct me if I get it wrong. But I think Your Honor
3 misunderstands Mr. Engel's new allegation. And it is a new
4 allegation. It is not a disclosure. It is not a disqualifying
5 conflict that has been disclosed. It is something that has not
6 been disclosed. And let's talk about it precisely and clearly.

7 The debtor presented two officers and a corporate
8 secretary for depositions over the last week. A third of those
9 depositions of Mr. Fletcher was concluded yesterday. At each
10 deposition at some time during the deposition the party
11 examining the witness asked the witness, who's your lawyer, and
12 the witness responded Porzio, Mr. Martin. And the questions
13 then proceeded to, well, are they representing you in your
14 individual capacity, or in some other way. And in each case I
15 put a representation on the record that pursuant to typical
16 indemnity agreements between companies and directors, the
17 company -- for purpose of today's deposition, the company is
18 providing a defense. That's it.

19 Five minutes before we came up to see Your Honor today
20 Mr. Engel said, would you put on the record -- would you
21 announce -- and frankly, we just didn't get to it -- that
22 you're representing the individuals. And I intended to
23 disclose exactly what I just disclosed, which is at those
24 depositions, the company, the corporate officers and
25 directors -- and that was the capacity in which the company was

1 representing them -- did not have separate individual counsel.

2 I, frankly, don't know of a single question and/or
3 answer that somehow created some personal liability for some
4 individual. If I've been ambushed in some way and there's some
5 law that I'm about to be made aware of that a company should
6 not, it's inappropriate. The company speaks through their
7 officers and directors. For me to state on the record that I
8 was -- the company was, in fact, representing them in their
9 capacity as officers and directors for purposes of the
10 deposition, then I'll stand corrected, if that's in some way
11 wrong. But that's the extent of it.

12 I am not representing individuals parallel to the case
13 in some other matters. The company provided a defense at their
14 deposition, period. I'm repeating myself.

15 Is that all Your -- that's the only thing I wanted to
16 say about Porzio.

17 THE COURT: That's the only thing I need you to say.
18 I won't put a sock in your mouth if you want to say anything
19 else, but we've taken a lot of time on this --

20 MR. MARTIN: With re --

21 THE COURT: -- so I think at this point we don't need
22 to say a whole lot more.

23 MR. MARTIN: All right. Let me say a couple of
24 things. I want to describe, because I want to try to get some
25 clarity in the record, in three sentences that hopefully no one

1 would object to, the role and position of Ms. Midanek versus
2 the debtors, because there's been a lot of banter about it.

3 Ms. Midanek is a turnaround professional who Mr.
4 Fletcher brought in in mid-2013 to help these debtors. He
5 appointed her as a director. As you've heard, there's sort of
6 two groups of debtors. Sorry, two groups of Richcourt funds.
7 These debtors fall under the umbrella of the Richcourt funds.
8 There are the British Virgin Islands Richcourt funds and there
9 are the Cayman Richcourt funds.

10 Ms. Midanek succeeded in essentially a takeover of the
11 British Virgin Islands funds and a forcing out of Mr. Fletcher.
12 That was done while she was subject to fiduciary duties to the
13 debtors, a duty of care and loyalty under a signed agreement
14 and a confidentiality agreement.

15 Third sentence, final. She then used that position as
16 now controlling the British Virgin Islands funds because of the
17 interentity claims; to use those claims to bring the winding of
18 petitions against the debtor in the Caymans to explain to the
19 Cayman's monetary authority all the things that were wrong with
20 Mr. Fletcher, and what, essentially, is what got the other
21 parties up in arms and is why we are here today.

22 So this lawsuit against Ms. Midanek, again, let's get
23 the timing straight, started before winding up petitions in the
24 Caymans, before these bankruptcies. And Mr. Harvey is our
25 attorney representing us in those.

1 With respect to Pinnacle and Mr. Katz -- and I think
2 there's sort of a -- in my view -- and parties can differ, but
3 in my view ought to be considered together. We've heard a lot
4 of attorneys saying whether schedules can or can't be completed
5 in time, whether there's enough information, not enough
6 information. None of the people you've heard from, including
7 me, are really qualified to tell you about that.

8 Suffice it to say we will have schedules on the U.S.
9 Trustee's time frame based on our internal records, with or
10 without Pinnacle. Would we like to continue to have Pinnacle's
11 help and Mr. Smith, who's been working eight hours a day, as I
12 said, and cleared his calendar, in verifying and getting the
13 best information possible? Yes.

14 And finally, what are bankruptcy cases about if not
15 assets, and liabilities, and claims? I need Mr. Katz. Mr.
16 Katz is a forensic accountant, among other things, and Mr. Katz
17 will be -- we haven't gotten the pretrial order yet, but he
18 will be on my witness list for December 17th.

19 THE COURT: Katz is a Pinnacle employee?

20 MR. MARTIN: No, Katz is CohenReznick.

21 THE COURT: Oh.

22 MR. MARTIN: Katz is the financial advisor. So he is
23 the debtors' financial advisor, the debtors' accountant; and to
24 me, it's two sides of the same coin. So can we do schedules
25 without Pinnacle? Yes, if we have CohenReznick. And I suspect

1 Mr. Katz is a professional and will continue to work whether or
2 not you carry his retention, but I don't understand the need
3 for carrying when we are always protected by the fee
4 application process. Thank you.

5 THE COURT: Not quite, Mr. Martin.

6 MR. MARTIN: Okay.

7 THE COURT: I was dealing with it in conceptual terms.
8 I didn't focus on the terms of the CohenReznick retention. Is
9 he getting paid on an hourly rate, or is there some kind of --

10 MR. MARTIN: It's hourly, Your Honor.

11 THE COURT: An hourly alone, no success fee or any of
12 that stuff?

13 MR. MARTIN: No success fee.

14 THE COURT: So all we're talking about is letting him
15 get paid for whatever hours that he works between now and the
16 17th?

17 MR. MARTIN: That's correct.

18 THE COURT: Okay. Thank you.

19 MR. ENGEL: Your Honor, just one minute?

20 THE COURT: Yes, Mr. Engel.

21 MR. ENGEL: Very quickly.

22 THE COURT: I'll hear you too, Ms. Ostad. Sit down,
23 please, ma'am.

24 MR. ENGEL: Very quickly. Mr. Fletcher was deposed in
25 every capacity, not just as an officer or director of these

1 debtors. He was also asked questions as a director/manager, et
2 cetera, of other nondebtor affiliates who engaged in wrongful
3 transactions with these debtors. He was asked questions in his
4 individual capacity as to a variety of other things that we're
5 investigating. Again, none of this is just a matter of
6 representing a corporate officer as to what he did as a
7 corporate officer. It was much more wide ranging than that.

8 And frankly, Mr. Fletcher, and the same is true for
9 Mr. Ladner, they have lots of lawyers. It doesn't have to be
10 Porzio. And all we're suggesting is that we not create more
11 conflict, because I don't know how --

12 THE COURT: You're suggesting that at this point in
13 the case I make the debtors' law firm -- the debtor hire a
14 different law firm?

15 MR. ENGEL: Yeah, that's right.

16 THE COURT: Uh-huh, all right. Ms. Ostad.

17 MS. OSTAD: Your Honor, I would just like to reserve
18 all of my clients' rights with respect to the comments made by
19 Mr. Martin about the takeover of the BVI funds, et cetera, et
20 cetera, and just reserve our rights. Thank you.

21 THE COURT: You've got a reservation of rights.

22 All right, everybody sit in place.

23 (Pause)

24 THE COURT: All right, ladies and gentlemen, my
25 rulings in some respects will be similar, and in other respects

1 will be different than the tentatives I articulated at the
2 outset of the hearing. And because I laid out so much of my
3 thinking in my questions to all of you, I'm not going to flesh
4 out the bases for the exercise of my discretion to the same
5 extent that I might otherwise have done so.

6 The Porzio retention will be approved, as I said in my
7 tentatives under 327(a), but I am also ordering that within a
8 week of this date, or as any reasonable extension beyond that
9 might be requested, that the Porzio firm, Mr. Martin, you or
10 your designee, file a supplemental affidavit or declaration
11 laying out what you told us on the record today, vis-a-vis
12 exactly who you're acting for and explaining more if you wish.
13 And if anybody had any residual concerns vis-a-vis Porzio's
14 continuing to act, that matter can be revisited as part of the
15 proceedings on the 17th of December.

16 Of course, anything that happens on the December 17th
17 or as a consequence of that hearing could also bear on the
18 counsel situation thereafter, but I am not going to be
19 prejudging that in any way at this point in time.

20 So for the avoidance of doubt the Porzio firm will
21 have full freedom to act as it sees fit, not just with respect
22 to preparation of this -- for the 17th, but also vis-a-vis the
23 things that any 327(a) counsel has to do for the wellbeing of
24 the estate under its watch.

25 I am modifying my tentative vis-a-vis CohenReznick,

1 because with Mr. Martin's explanation it appears to me that
2 CohenReznick may be required to be a testifying witness at the
3 hearing, and the same principles that inform the exercise of my
4 discretion, vis-a-vis allowing Porzio to act for the debtors
5 under their existing management, cause me to believe that it
6 should have the witness support that it requires as well.

7 The continued services of CohenReznick after December
8 17th will be fair game for discussion on that date or
9 thereafter.

10 For the avoidance of doubt I am approving only an
11 hourly rate and I'm not dealing with the more difficult issues
12 that might be associated with any kind of success fee, if one
13 had been requested.

14 Vis-a-vis Patterson Belknap, I am authorizing
15 Patterson Belknap's service under 327(e) with respect to the
16 Muho litigation and anything that might be required to protect
17 the interests of the estates -- estates, plural, correct -- in
18 any battles with Muho. But the request is denied without
19 prejudice otherwise, including for the avoidance of doubt, the
20 continuation of the Midanek litigation, except that I am
21 authorizing communications to the New Jersey court to advise
22 the New Jersey court of my ruling to avoid prejudice to the
23 interests of the estate on the one hand, or -- and also to
24 avoid any unfair advantage in the other direction on the other.

25 I see no need for services now vis-a-vis Wilmington

1 Trust. All of these matters that are denied without prejudice
2 are fair game for bringing back to me after we know where we're
3 headed on the 17th of December.

4 Finally, the Pinnacle retention -- or more precisely
5 the motion to assume and assign -- excuse me, not to assume and
6 assign -- to assume Pinnacle arrangements is denied without
7 prejudice, again, until after we get a better handle on things
8 after the 17th, subject to two additional protective provisions
9 that I will impose.

10 First, the time for the debtors to file their
11 schedules and statements will be extended until thirty days
12 after December 17th, subject to further order of the Court and
13 without prejudice to the rights of any party in interest or the
14 U.S. Trustee program, to weigh in on whether further extensions
15 should be granted.

16 Secondly, the parties are encouraged to talk to Mr.
17 Smith or his designee, or anybody else at Pinnacle, to see if,
18 as is very possible, there would be consensus as to the need
19 for useful Pinnacle services. And I'm going to give you the
20 ability to see if there are areas in which people see an
21 immediate need for Pinnacle to serve, and I certainly have a
22 very open mind vis-a-vis that.

23 My discretion in the Pinnacle respect is informed by
24 the view that I do not see an immediate need for the services
25 that Pinnacle would provide between now and the 17th. If and

1 to the extent people did see a need, which, frankly, has not
2 been shown to me after all the discussion we had today, but
3 which I would approach with an open mind if it were to occur,
4 that could affect the exercise of my discretion going forward,
5 also for the avoidance of doubt.

6 Nothing has been said to me nor do I find any basis
7 for questioning the integrity, capability, or anything else
8 vis-a-vis Pinnacle. And my exercise of my discretion here is
9 informed by the corporate governance disputes that permeate
10 this case, and this is nothing personal vis-a-vis Pinnacle.

11 All right. Not by way of reargument, do we have any
12 open issues, Mr. Glenn?

13 MR. GLENN: Your Honor, it's not for today, but I
14 don't want my silence to be deemed acceptance. The Patterson
15 application which we had categorically opposed before the
16 recent update, indicated that the debtors were to pay fifty
17 percent of their fee, and the nondebtors would pay fifty
18 percent even though we represent only six of twelve -- fifteen
19 funds. And there may be a justification for that, and we'll
20 talk to Mr. Martin to see if that's appropriate, but if it's
21 not, I just wanted to make sure that I wasn't waiving the right
22 to contest any appropriate portion of that.

23 THE COURT: All right. You're just looking for a
24 reservation of rights at this point?

25 MR. GLENN: Right. Correct.

1 THE COURT: Okay, Mr. Martin?

2 MR. MARTIN: I can go further and agree --

3 THE COURT: Come to a mic if you would, please.

4 MR. MARTIN: I'm sorry.

5 I think we can go farther and stipulate to what Mr.

6 Glenn proposed. There are fifteen entities, if I'm not

7 mistaken, who are plaintiff in the Muho action, and Mr. Harvey

8 had a retainer which, frankly, was unallocated.

9 There are six debtors, and we have proposed that Mr.

10 Harvey's services be booked fifty/fifty. And what Mr. Glenn is

11 suggesting, that it be a numerical ratio in terms of fees and

12 expenses, we agree.

13 THE COURT: Okay. Ms. Ostad, did you need to be

14 heard?

15 MS. OSTAD: Your Honor, I have only today asked Mr.

16 Martin for his thoughts on this, and I think I've spoken to Mr.

17 Engel as well. But one housekeeping issue as to the December

18 17th hearing that we've come across is that we'd like to submit

19 an affidavit of Cayman Island counsel on Cayman Island law

20 without necessarily the need to fly counsel in, but perhaps to

21 have an affidavit and to have counsel available on the phone at

22 the hearing. And I wanted to see if Your Honor has any

23 thoughts about that.

24 THE COURT: I always take direct testimony by

25 affidavit, but in any instance in which somebody wants to

1 cross-examine, I never take away the right to cross-examine.
2 So if you can convince your opponents not to cross your person,
3 then I won't insist on a personal appearance, but that's for
4 you to resolve. I do not take cross-examination except live.

5 MS. OSTAD: Thank you, Your Honor.

6 THE COURT: Also, if this person is testifying as an
7 expert, then your opponents have the rights to compliance with
8 the expert rules. So talk to your opponents about it.

9 I am very much of a mind to streamline hearings and to
10 avoid unnecessary costs, but not at the price of due process.

11 MS. OSTAD: Thank you.

12 THE COURT: Okay. I see a whole bunch of more people
13 rising. Are you rising to get out of here or to raise new
14 issues?

15 MR. HILDBOLD: No, I just --

16 THE COURT: Mr. Hildbold.

17 MR. HILDBOLD: Yeah, just a housekeeping issue I
18 wanted to let the Court know that we did meet and confer with
19 the Porzio firm yesterday to discuss amending the agreed to
20 schedule. There's been a few delays in getting documents and
21 depositions taken, so if it's okay with Your Honor, we would
22 submit an amended schedule to replace what is currently there.

23 THE COURT: That makes me shrug my shoulders if it's
24 consensual, but I need to also ask you, do you envision just
25 rearranging things before the 17th or asking for an adjournment

1 beyond the 17th?

2 MR. HILDBOLD: No, no, just rearranging things before
3 the 17th.

4 THE COURT: Okay. As long as you allow me enough time
5 to read stuff before the trial date.

6 MR. HILDBOLD: Of course.

7 THE COURT: Okay, anything else?

8 MR. HILDBOLD: No.

9 THE COURT: All right. Those who are here then on
10 Soundview are excused. We're going to take only a five-minute
11 recess and then I'm going to hear WineCare.

12 (Whereupon these proceedings were concluded at 11:39 a.m.)

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I N D E X

RULINGS

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.

Sharona Shapiro

SHARONA SHAPIRO

AAERT Certified Electronic Transcriber CET**D 492

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